

Amendments to House Bill No. 25
1st Reading Copy

EXHIBIT 3
DATE 1/23/09
HB 25

Requested by Representative Michele Reinhart

For the House Natural Resources Committee

Prepared by Joe Kolman
January 23, 2009 (9:56am)

1. Title, page 1, line 5.
Following: "ISSUANCE OF A "
Insert: "PERMIT AND A"

2. Title, page 1, line 8.
Following: "85-2-102"
Strike: ", 85-2-306, "

3. Page 2, line 2.
Strike: "85-2-306(9)"
Insert: "[section 2]"

4. Page 2, line 25.
Strike: "85-2-306(9)"
Insert: "[section 2]"

5. Page 4, line 19 through page 8, line 5.
Strike: section 2 in its entirety

"NEW SECTION. Section 2. Appropriation by department of transportation for specific wetland restoration. (1)(a) The department of transportation is required to obtain a permit pursuant to this chapter before appropriating ground water or diffuse surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387, to restore a functional wetland with the intent to substantially replicate the predisturbance conditions by filling in or removing constructed ditches, drains, or similar structures that drained a historically functional wetland.

(b) The application must state that the restored wetland will be designed to not exceed the size of the original wetland.

(2) (a) If a permit is granted, the department of transportation shall notify the department that the appropriation has been completed within 90 days of receiving certification of the number of applied-for credits attached to the wetland as assigned under the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387.

(b) The notification must contain proof that the aquatic resource activities were carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251

through 1387.

(3) Upon receipt of the notification, the department shall review the notification in accordance with 85-2-315.

(4) In order to define the nature and extent of the water right, the permit and the certificate of water right issued pursuant to this section must state:

(a) the date of the priority of the right;

(b) the purpose for which the water included in the right is used;

(c) the place of use and description of the land to which the right is appurtenant; and

(d) the number of applied-for credits attached to the wetland as assigned under the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387, and certified to the department by the department of transportation.

(5) In addition to any remedy available to a certificate of water right holder, the permit and the issuance of a certificate of water right under this section entitles the department of transportation to protect the credits set forth in the certificate of water right and permit against any appropriation of water in any subsequent permit or change authorization proceeding conducted under this chapter. Proof of the diminishment of credits is prima facie proof that water is not reasonably legally available under 85-2-311(1)(a)(ii) and of adverse effect under 85-2-402 in any proceeding conducted under this chapter.

(6) The purpose of a permit and a certificate of water right issued under this section may not be changed.

Renumber: subsequent sections

6. Page 8, line 9.

Strike: "85-2-306(9)"

Insert: "[section 2]"

7. Page 9.

Following: line 5

Insert: "NEW SECTION. Section 4. {standard} Codification instruction. [Section 2] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 2]."

Renumber: subsequent sections

- END -